



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2011

Mr. John R. Batoon  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901

OR2011-16766

Dear Mr. Batoon:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 436185.

The City of El Paso (the "city") received a request for information pertaining to firefighters accused of DUI, domestic violence, felonies, thefts, assaults, sexual harassment, possession of illegal substances, and arrests, including disciplinary actions, over a specified time period. You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.119, 552.142, 552.1425, and 552.151 of the Government Code. We have considered the exceptions you claim.

We must address the city's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate

which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You inform us the city received the requestor's clarification of the request on August 23, 2011. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information requested. Consequently, we find the city failed to comply with the procedural requirements of section 552.301 of the Government Code.

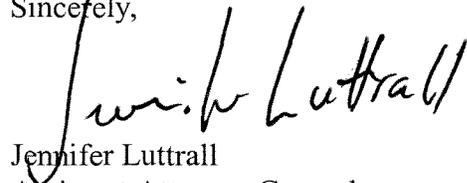
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert the requested information is confidential under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.119, 552.142, 552.1425, and 552.151 of the Government Code. In failing to comply with the procedural requirements of section 552.301, you have waived the discretionary exceptions you raised. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the requested information may not be withheld under any of the discretionary exceptions. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 436185

No enclosures

c: Requestor